

Performance Bond Process Guidelines

Access Management Unit, CDOT

The Permittee is responsible to obtain and fund the performance bond in conformance with the State Highway Access Code and these Guidelines. The bonding requirement will only apply to private projects. Local Agencies will not be required to comply with these guidelines. Regardless of the cost necessary to complete the project, the Region can, at its discretion, require a Performance Bond.

General Bond Requirements:

1. The Permittee will provide CDOT with a performance bond for an amount equal to 110% of the cost necessary to complete the project in accordance with the access permit terms and conditions, as estimated by the Engineer of Record (EOR) and approved by CDOT.
2. The bond shall incorporate access permit(s) and any design waivers by reference.
3. The bond company must be licensed to do business in Colorado.
4. The bond shall include the name, title, address and statement that the agent is approved to serve as an agent for /on behalf of the bond company.
5. CDOT needs a statement from the Permittee that includes:
 - a. The Permittee has authorized the person who is their representative to serve as its agent for the purposes of the bond.
 - b. The name, address and title of the agent serving as representative for the Permittee.
6. The bond shall include a binding statement that the bond company will pay for completion of the project in accordance with Access Permit terms and conditions.
7. The bond shall be binding on heirs, executors and assigns.
8. The bond can be extended only if CDOT agrees to extend the bond.
9. The Bonding process can be expedited if Permittee uses a preapproved bonding format. The Permit Unit will provide sample bonds to the Permittee. If the Permittee chooses to submit a different format, it will be subject to approval by the Office of Attorney General.

Bond Terms Conditions for Draws:

CDOT may draw from the performance bond when any one or more of the following conditions occur:

1. Construction activity ceases for an unreasonable amount of time not due to forces of nature or other crisis not of the contractor's making prior to completion of permitted improvements.
2. The project is not completed within the permitted timeframe (initial or as later extended in writing by CDOT).
3. The Permittee notifies CDOT that the construction will not be completed in accordance with permit requirements.
4. The completed project does not reasonably conform to Access Permit terms and conditions.

Process to Draw on or Release Bond:

CDOT Notification to Draw

1. CDOT will notify the Permittee, EOR, and bond agent in writing when any of the conditions for draw are met, and CDOT is contemplating making a draw request.
2. The CDOT notification letter will include:
 - a. Permit Number and Project Location.
 - b. Reason for draw (condition that was met).
 - c. Amount and basis of draw amount.
 - d. Statement that additional draws may be necessary for reasons as stated in the notification letter.
3. CDOT may stop the bond withdrawal process if the conditions for draw are resolved to CDOT's satisfaction.

Partial Draws

1. CDOT will draw an amount of the performance bond funds commensurate with the amount of money necessary for CDOT to complete the required improvements. This could include the cost it would take for CDOT to hire the work out, including Davis-Bacon Act wages, etc.
2. CDOT will determine the funding necessary to finish the permitted improvements based on field review, testing reports, and CDOT's and CDOT contractor's bid to complete the project in accordance with Access Permit terms and conditions.

3. CDOT will release remaining bond funds once all required improvements have been completed in accordance with Access Permit terms and conditions.

Partial Release

1. If CDOT draws from the bond amount and completes the construction, and the Engineer of Record submits a statement certifying that the completed project is in accordance with Access Permit terms and conditions, then CDOT will release remaining bond funds with a Letter of Acceptance once all permitted improvements have been completed by CDOT.
2. CDOT will release partial bond amounts for a planned phased improvement. The release will occur at the end of each identified phase, in accordance with the conditions listed in the next section (full release).

Full Release

CDOT will fully release the performance bond when the conditions for CDOT initial acceptance are met, including:

1. CDOT review and acceptance of construction, including punch list items;
2. CDOT receipt of as-built plans (if necessary due to changes); and
3. The Engineer of Record submits a statement certifying that the completed project is in accordance with Access Permit terms and conditions.

Warranty Bond

The Region, at its discretion, may require a Warranty Bond upon completion and acceptance of the highway improvements. If a Warranty Bond is required, it should be provided prior to release of the Performance Bond. The amount should be 10% of the performance bond amount. The amount can be higher if the Region deems it necessary. The bond shall be held for two (2) years after the construction acceptance date. The warranty bond shall generally follow the format of the performance bond as described within these guidelines.